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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC 20554**

In the Matter of

Missouri Petition for Preemption

Docket No. 98-122

## Experte Comments of the Rural Utilities Service

## Introduction

The Rural Utilities Service (RUS) is a rural development agency of the United States Department of Agriculture. RUS is a policy, planning, and lending agency with over \$42 billion invested in rural telecommunications, electric, and water and waste disposal infrastructure. RUS lends to cooperatives, municipalities, tribal entities, nonprofit organizations, and commercial companies. RUS is also an advocate for modern, safe, and affordable utility service for rural citizens.

## Digital Opportunities for Rural America

The information revolution holds its greatest promise in rural America where distance, density, and geography have often impeded economic development. Creating digital opportunity and access to modern telecommunications services is a key policy objective of RUS. The RUS lending programs have been a major success. RUS telecommunications borrowers are leading the way in bringing advanced telecommunications services to hometown America. These for-profit and cooperative telecommunications providers, however, only serve approximately one-half of the rural market. The goal of bringing modern telecommunications services to all Americans will require multiple efforts.

Throughout rural America, electric cooperatives, public power districts, and municipal utilities are also investing in rural information technologies. Rural water systems are hosting wireless communication devices on their towers. Electric cooperatives are providing Internet access to rural communities and municipal telecommunications systems are bringing improved quality to small town customers. In several instances, electric utilities are working in partnership with independent telecommunications carriers to improve rural service. These telecommunications efforts are helping close the digital divide. Some of the most exciting initiatives occur when rural electric and rural telecommunications providers work together to bring new and needed services to rural communities. Unfortunately, state legislation and regulation have been used to block efforts by similar entities to offer telecommunications services.

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List A B C D E

Telecommunications carriers have legitimate concerns about other utilities offering telecommunications service. Consumers should be protected from cross-subsidization between electric and telecommunications utilities and all carriers should compete on a fair and competitively neutral basis. For example, electric utilities providing telecommunications services should be subject to the same oversight as telecommunications carriers. There are also some rural markets that may not be capable of supporting multiple providers of telecommunications services. These issues can and should be managed under the terms of the Telecommunications Act of 1996 ('96 Act). However, simply blocking all entry of electric or other utilities from the telecommunications market is not consistent with the '96 Act nor is it an appropriate response to these important concerns.

Congress spoke very clearly on the ability of states to block entry into the telecommunications market. Subject to authority reserved to states in rural markets, Section 253 (a) of the '96 Act states that "[n]o state or local statute or local legal requirement may, prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."

Congress was so interested in making it possible for electric utilities to participate in the newly competitive telecommunications market, that it specifically amended federal legislation applicable to investor owned electric utilities to ensure their ability to offer telecommunications services. No similar amendment was necessary for public and cooperative power providers since federal restrictions on non-electric activities did not apply to these entities.

The Conference Committee Report that accompanied the '96 Act further reinforced Congressional intent with regard to utilities. The report explains that Section 253 (b) permits states to take actions to protect "captive rate payers from potential harm." It also definitively and clearly explains that "explicit prohibitions on entry by a utility into telecommunications are preempted under this section." The report also makes clear that the choice to enter into the telecommunications market is with the utility itself because the protections for "consumers of electric, gas, water, or steam utilities" are relevant "to the extent such utilities choose to provide telecommunications services."

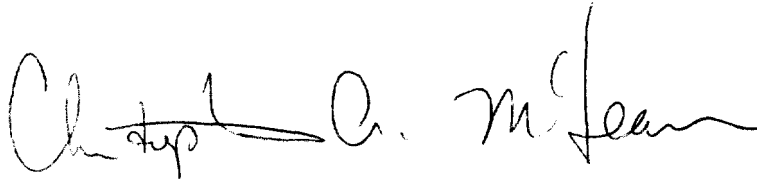
Section 253 was a carefully crafted provision. The breadth of the term "any entity" was intentional. Electric utilities are included in that broad language. The market opening language of section 253 combined with the rural provisions of that section and the universal service provisions of section 254 form the fundamental bargain, or handshake of the '96 Act.

RUS supports strong electric consumer protections permitted by Section 253 as well as a full reservation of state authority in issues of rural entry. These reservations and conditions are appropriate and permitted under the '96 Act. What is prohibited is the blanket legislative or regulatory bar to municipal, cooperative, or other utility entry. RUS respectfully recommends that the FCC give effect to Section 253's market opening language but that it open an inquiry to explore appropriate consumer and market protections when other utilities enter telecommunications markets. The inquiry should examine appropriate protections against cross

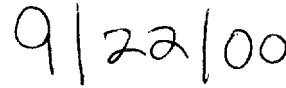
utility cross subsidization, appropriate regulatory policies for public entities and taxpayer exposure to risk and limitations of the use of condemnation authority by a municipal utility in a competitive market.

Conclusion

RUS-financed local independent rural telecommunications companies and cooperatives have done an excellent job bringing modern services to millions of Americans. Rural electric cooperatives and municipal utilities can also help bring modern telecommunications services to those parts of rural America that still do not receive such high quality service.

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Christopher A. McLean  
Administrator  
Rural Utilities Service

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Date